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**FILED**

Clerk  
District Court

**DEC - 6 2005**

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

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*Attorneys for Defendant World Corporation*

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE**

**NORTHERN MARIANA ISLANDS**

**YU SUK CHUNG,**

Plaintiff,

vs.

**WORLD CORPORATION,**

Defendant.

CIVIL CASE NO. **04-00001**

**MOTION FOR AN ORDER  
DECLARING A MISTRIAL**

**Date:** \_\_\_\_\_

**Time:** \_\_\_\_\_

Defendant World Corporation, by its attorneys, moves the Court for an order declaring a mistrial in this case as the jury cannot reach a unanimous verdict and discharging the jury, on grounds of manifest necessity.

The Court may declare a mistrial and discharge the jury if there is "manifest necessity" or if the "ends of public justice" would otherwise be defeated if a mistrial was not declared. *United*

1 *States v. Salvador*, 740 F.2d 752, 754 (9<sup>th</sup> Cir. 1984). A “deadlocked jury” is a classic example of  
 2 “manifest necessity.” *Id.* at 755. In such circumstances, the decision of the trial judge to declare  
 3 a mistrial will be given great deference because he is in the best position to assess the relevant  
 4 factors. *United States v. Rogers*, 609 F.2d 1315, 1317 (9<sup>th</sup> Cir. 1979).

5 Under the law of this circuit, “the factors to be considered by the judge include the jury’s  
 6 collective opinion that it cannot agree, the length of the trial and complexity of the issues, the  
 7 length of time the jury has deliberated, whether the defendant has made a timely objection to the  
 8 mistrial, and the effects of exhaustion or coercion on the jury.” *Id.* The “crucial factor” is the  
 9 jury’s statement that it cannot agree. *Id.* Therefore, the “judge should question the jury in such  
 10 circumstances either individually or through its foreman, on the possibility that its current  
 11 deadlock could be overcome by further deliberations.” *Id.* (quoting *United States v. See*, 505 F.2d  
 12 845, 850 (9<sup>th</sup> Cir. 1974)). However, a “judge can appropriately determine that there is a manifest  
 13 necessity for a mistrial by questioning only the jury foreman.”<sup>1</sup> *United States v. Cawley*, 630  
 14 F.2d 1345, 1349 (9<sup>th</sup> Cir. 1980). *See Hysell v. Pliler*, 2001 WL 940914, \*4 (N.D. Cal. 2001).

15 This is the fourth day of jury deliberations. On Friday afternoon, December 2, 2005, the  
 16 second day of deliberations, the jury indicated that it had come to an impasse on the second claim  
 17 (fraudulent misrepresentation).<sup>2</sup> On Monday morning, December 5, 2005, the Court gave the jury  
 18 an *Allen*-type instruction (over Defendant’s objection).<sup>3</sup> It is now one day later, December 6, and  
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20 <sup>1</sup> Indeed, Defendant submits that there is a danger in questioning individual jurors.  
 21 Inquiry into or the revelation of the numerical split of a deadlocked jury could pose problems in  
 22 the proceedings. *See United States v. See*, 505 F.2d at 852 n.10; *United States v. Seawell*, 550  
 F.2d 1159, 1163 n.7 (9<sup>th</sup> Cir. 1977). “There is no requirement that each individual juror be polled  
 before declaring a mistrial.” *Hysell v. Pliler*, 2001 WL 940914, \*5.

23 <sup>2</sup> There are essentially only three claims at issue in this case – breach of contract,  
 24 fraudulent misrepresentation, and punitive damages. The jury can decide the claim for punitive  
 25 damages only after it has reached a verdict in favor of Plaintiff on the fraudulent  
 misrepresentation claim.

26 <sup>3</sup> No further *Allen* or *Allen*-type instructions may be given in this case. A second  
 27 instruction would constitute reversible error. *See Kaluna v. Iranon*, 952 F.Supp. 1426, 1430-31  
 28 (D. Haw. 1996). Indeed, the Ninth Circuit has observed that a “single *Allen* charge, without  
 more, stands at the brink of impermissible coercion.” *United States v. Seawell*, 550 F.2d at 1163.

1 the jury has still not arrived at a verdict as to the claim for fraudulent misrepresentation. It is  
2 unknown if the jury has reach a verdict as to the 1st verdict form (breach of contract).

3 Defendant respectfully submits that the time has come to declare a mistrial because of the  
4 jury deadlock on the claim for fraudulent misrepresentation and its inability to come to a verdict  
5 on any of the claims. The time that has elapsed since the jury's first indication of a deadlock, and  
6 the time that has elapsed since the Court gave the jury an *Allen*-type instruction suggests that  
7 further deliberations would not be beneficial. The Court must "be careful not to attempt to extract  
8 a verdict from the jury by unacceptably coercive means." *Salvador*, 740 F.2d at 755. *See United*  
9 *States v. Cawley*, 630 F.2d at 1349 ("A mistrial is declared when the jury is deadlocked as much  
10 to protect the defendant from being convicted by a coerced jury as to allow the prosecution a fair  
11 chance to present its case to an impartial jury."). As more time passes, the risk that an unfair  
12 verdict might result from exhaustion or coercion of the jury also increases.

13 At the very least, the Court should immediately inquire of the jury foreperson to confirm  
14 whether there is a reasonable possibility that the current deadlock could be overcome by further  
15 deliberations. If the inquiry reveals no reasonable possibility that the deadlock can be overcome,  
16 then the Court should declare a mistrial immediately and discharge the jury.

17 **Dated: December 6, 2005**

**MATTHEW T. GREGORY, ESQ.**  
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21 By: 

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